No. 48462-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Marriage of:

GRETCHEN RUFF,

Petitioner,

and

WILLIAM WORTHLEY,

Respondent.

REVIEW FROM THE SUPERIOR COURT
FOR CLARK COUNTY
THE HONORABLE JOHN P. FAIRGRIEVE

BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules and Regulations

Other Authorities

I. INTRODUCTION

The trial court erred in looking beyond the parties' unambiguous 50/50 parenting plan and setting an evidentiary hearing to determine which parent is "actually" the primary residential parent in order to force application of the Child Relocation Act to the father's request to relocate the parties' daughter to Missouri. When a child resides an equal amount of time with each parent under a 50/50 parenting plan, the Child Relocation Act cannot apply because the child does not "reside a majority of the time" with either parent. RCW 26.09.430. Therefore, if a parent with a 50/50 parenting plan wishes to relocate the child, the relocating parent must prove a basis under RCW 26.09.260 to warrant substantially decreasing the child's residential time with the non-relocating parent in order to accommodate the child's relocation and designate the relocating parent the primary residential parent.

Because the Child Relocation Act does not apply to the parties' 50/50 parenting plan, and the trial court found that the father failed to prove a basis to warrant modifying the parenting plan under RCW 26.09.260 (1), (2), the trial court erred in failing to dismiss the father's action to modify the parenting plan. This Court should

reverse and remand with directions for the trial court to dismiss the father's relocation and modification actions.

II. ASSIGNMENT OF ERROR

The trial court erred in entering its Order re: Evidentiary Hearing and Motion for Revision by setting an evidentiary hearing to determine which parent is the primary residential parent, so that it could then decide whether the child should be allowed to relocate under the Child Relocation Act. (CP 245-46)

III. ISSUES RELATED TO ASSIGNMENT OF ERROR

1. Under the plain language of the Child Relocation Act, the "notice requirement" that triggers application of the Act occurs only when a parent "with whom the child resides a majority of the time" intends to relocate the child. Does the Child Relocation Act apply to a 50/50 parenting plan?

2. If a parent who equally shares residential time with the child cannot show a basis under RCW 26.09.260 to modify a 50/50 parenting plan to allow the parent to relocate the child and effectively make the relocating parent the primary residential parent, should the trial court dismiss the modification action?

IV. STATEMENT OF FACTS

A. The parties agreed to a 50/50 parenting plan that gives each parent equal residential time with the child.

Petitioner Gretchen Ruff and respondent William Worthley have two daughters, ages 13 and 5 when the parties divorced on September 21, 2009. (CP 1) The parties agreed to a final parenting plan under which the daughters reside equally with each parent on an alternating weekly basis (a "50/50 parenting plan"). (CP 1-10) The agreed parenting plan provided that the "children named in this parenting plan are scheduled to reside equally or substantially equally with both parents. For the purposes of this parenting plan, the parents are named the joint legal and physical custodians of the children." (CP 4)

B. In 2011, the parties agreed to an informal temporary schedule to accommodate the mother's brief relocation to California without modifying their 50/50 parenting plan. When the mother returned to Washington in 2013, the parties resumed the 50/50 residential schedule.

In June 2011, Ruff temporarily moved to California to live with her now-husband. (CP 95, 189) Worthley refused when Ruff asked for his agreement to allow the daughters to relocate with her to California. (CP 95) The parties agreed to a temporary schedule under which Ruff spent at least a week each month in Washington

with the daughters and the daughters resided with Ruff in California during school breaks. (CP 189-90)

Ruff only intended to temporarily reside in California, and neither party sought to modify the parenting plan. (CP 189) By August 2013, Ruff had returned to Washington permanently, and the parties resumed the alternating weekly schedule. (CP 189-90) Ruff and her new husband purchased a home in Battle Ground, Washington, near Worthley's home, where he lives with his new wife and her children. (CP 190)

When the older daughter aged-out of the parenting plan, she moved in with Ruff, and now attends Clark College. (CP 190) The younger daughter, now age 11, has continued to follow the equal residential schedule of the agreed 50/50 parenting plan.

C. In 2014, the father sought to relocate the child to Missouri by filing a notice under the Child Relocation Act. The mother moved to dismiss the relocation action because the Act does not apply to 50/50 parenting plans.

On June 25, 2014, Worthley filed a Notice of Intended Relocation, seeking to relocate the parties' younger daughter, then age 10, to Missouri. (CP 12-14) Worthley claimed that he wanted to relocate to be closer to his aging parents and because he believed he could find cheaper health insurance in Missouri. (*See* CP 13, 15)

Ruff moved to dismiss on the grounds that the Child Relocation Act does not apply when there is no "person with whom the child resides a majority of the time." (CP 29-31) Ruff argued that if Worthley wished to relocate the younger daughter, he would need to prove a basis to modify the 50/50 parenting plan under RCW 26.09.260. (CP 30-31)

Worthley responded by claiming he was the "*de facto* residential parent" because Ruff had temporarily relocated to California between 2011 and 2013. (CP 77) Alternatively, Worthley asserted that the legislative history of the Child Relocation Act provides that in the case of a 50/50 parenting plan, the notice requirement under the Act applies to both parents and neither parent has the presumption allowing relocation. (CP 65, 79, *citing* 1 House Journal 56th Leg. Reg. Sess. at 551 (Wash. 2000))

D. Three different judicial officers could not agree on how to proceed with the father's action. An evidentiary hearing was ultimately ordered to establish which parent was the primary residential parent under the 50/50 parenting plan in order to apply the Child Relocation Act.

On September 19, 2014, Clark County Superior Court Judge Daniel Stahnke temporarily restrained Worthley from relocating the parties' daughter. (CP 83) Although Judge Stahnke declined to dismiss the relocation action, he ruled that Worthley "must file a

Petition for Modification of Parenting Plan and follow all statutory steps, including a hearing for adequate cause prior to pursuing his request for relocation." (CP 83) Neither party challenged this ruling.

Worthley filed his petition seeking a major modification of the 50/50 parenting plan under RCW 26.09.260(1), (2) on February 20, 2015, five months after Judge Stahnke's order. (CP 85) As a basis for modification, Worthley alleged that the daughter has been "integrated into my family with the consent of the other party in substantial deviation" from the 50/50 parenting plan. (CP 87) RCW 26.09.260(2)(b). Even though the parties had been following the 50/50 parenting plan for the last 18 months, Worthley relied on the period when Ruff had temporarily relocated to California to make his "integration" claim. (CP 88)

Worthley also claimed that modification of the 50/50 parenting plan was warranted because the current residential schedule was detrimental to the daughter. (CP 87) RCW 26.09.260(2)(c). Specifically, Worthley claimed that "since the last parenting plan was entered, [Ruff]'s choices suggest that if the primary residence is changed to being with [Ruff], without [Worthley]'s influence because of relocation, that environment

would be detrimental to the child's mental and emotional health." (CP 88-89) Worthley asserted no other bases for modification.

On May 21, 2015, the parties appeared before Clark County Superior Court Commissioner Dayann Liebman for an adequate cause hearing on Worthley's modification petition. Commissioner Liebman found that the parties have a "true 50/50 parenting plan where both parties are designated the joint custodial parents of the parties' minor child." (CP 221) Commissioner Liebman rejected Worthley's request for modification based on claims of alleged "integration" and "detrimental environment to the child." (CP 221-222) However, Commissioner Liebman found adequate cause based on Worthley's "Petition to Relocate as this may be a detriment to the child with the alternating week schedule in the parenting plan with parties that live over 2000 miles apart." (CP 222) In making this decision, Commissioner Liebman expressed disagreement with Judge Stahnke's earlier ruling that Worthley had to first file a petition to modify the 50/50 parenting plan before the court could consider his requested relocation. (CP 221)

The parties next appeared before Clark County Superior Court Judge John Fairgrieve when Ruff moved to revise Commissioner Liebman's adequate cause determination. Judge Fairgrieve agreed

with Commissioner Liebman that there was no basis for modification under RCW 26.09.260. (CP 245) However, Judge Fairgrieve vacated Commissioner Leibman's adequate cause determination based solely on the fact of the requested relocation. (CP 246)

After consulting with two other Clark County judges, Judge Fairgrieve concluded that because the Child Relocation Act presumes that one parent is the primary residential parent, an evidentiary hearing was necessary to determine which parent was actually the primary residential parent before the court could consider Worthley's request to relocate the daughter. (CP 241, 245; 8/21/15 RP 3-9) Recognizing that this "ruling involves a controlling question of law as to which there is a substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation," Judge Fairgrieve certified the ruling under RAP 2.3(b)(4). (CP 246)

Ruff sought discretionary review of the trial court's decision in this Court. (CP 242) Both parties agreed that review was warranted but disputed the reason. Ruff argued that the Child Relocation Act did not apply to 50/50 parenting plans, and that once the court found no basis to modify the parenting plan, it should have dismissed Worthley's pending actions. Worthley argued that the

Child Relocation Act did apply and that it was unnecessary for the trial court to set an evidentiary hearing to determine which parent was the primary residential parent. Commissioner Eric B. Schmidt of this Court granted discretionary review.

V. ARGUMENT

A. The trial court erred in setting an evidentiary hearing to determine which parent is the primary residential parent under the 50/50 parenting plan in order to trigger application of the Child Relocation Act.

The trial court erred in setting an evidentiary hearing to determine which parent is the "primary residential parent" in order to force the 50/50 parenting plan within the purview of the Child Relocation Act. The parents' status was already established by the parenting plan itself – a "true 50/50 parenting plan" (*See* CP 4, 221) – and neither parent was the primary residential parent.

The trial court could not go behind the plain language of the parenting plan to make a determination which parent is the primary residential parent solely so that it could apply the Child Relocation Act. In determining whether (or how) the Child Relocation Act applies, the court must look to the express intent set out in the parenting plan and cannot make further inquiry to determine the "actual residential circumstances" if it conflicts with the parenting

plan. *Marriage of Fahey,* 164 Wn. App. 42, 59, ¶ 34, 262 P.3d 128 (2011), *rev. denied* 173 Wn.2d 1019 (2012).

In *Fahey,* the father argued that the mother was not the primary residential parent for purposes of the rebuttable presumption under the Child Relocation Act because the children actually resided the majority of the time with him, even though the parenting plan designated the mother as the primary residential parent. This Court rejected the father's argument, noting that "actual residential circumstances [cannot] negate the express intent of a primary residential parent designation in a permanent parenting plan." *Fahey,* 164 Wn. App. at 59, ¶ 34.

This Court also rejected the father's alternative argument that the Child Relocation Act did not apply at all because the parenting plan was in a fact a 50/50 plan because it provided that the mother could consent to the father having up to 50 percent of the residential time "to the best it can be worked out." *Fahey,* 164 Wn. App. at 59, ¶ 33. While this Court agreed that the Act would not apply if the plan was indeed a 50/50 parenting plan, it rejected the father's claim that the parties had a 50/50 parenting plan because the plain language of the parenting plan placed the children primarily with the mother. *Fahey,* 164 Wn. App. at 58-59, ¶¶ 32, 33; *see also George v. Helliar,*

62 Wn. App. 378, 384, 814 P.2d 238 (1991) (court cannot consider the actual residential time the daughter spent with the father in contravention of the original parenting plan as a basis to modify the parenting plan).

Here, the plain language of the parties' parenting plan makes it a "true 50/50 parenting plan." The plan provides that the child "shall reside with both parents an equal amount of time" (CP 2), and the parties were "named the joint legal and physical custodians." (CP 4) The trial court could not go behind the "plain language" of the parenting plan and subject the parties to a useless hearing to determine which parent was the "actual" primary residential parent.

This is particularly true here, when the only evidence the father could present to claim he was the "actual" primary residential parent would be based on the parties' informal agreed temporary adjustment to the residential schedule when the mother was in California with her new husband, years earlier. The trial court could not rely on that temporary period to find that the father was the primary residential parent in contravention to the plain language and intent of the parties' 50/50 parenting plan. *See Marriage of Taddeo-Smith & Smith*, 127 Wn. App. 400, 110 P.3d 1192 (2005).

In *Taddeo-Smith,* the parties' parenting plan placed the parties' sons primarily with the mother. While the mother was hospitalized for three months after a car accident left her quadriplegic, the parents agreed that the children could temporarily reside primarily with the father. When the mother sought to resume the schedule under the parenting plan after being released from the hospital, the father moved to modify the parenting plan, claiming that he had been acting as the primary residential parent and asking the Court to make that role permanent.

The trial court granted the modification based on the sons' purported "integration" into the father's home. The appellate court reversed, holding that the trial court erred in relying on the sons' temporary placement in the father's home as a basis to modify. The court noted that there was no evidence that the children's temporary placement in the father's home was intended to be permanent, and that under the parenting plan the mother remained the primary residential parent. *Taddeo-Smith,* 127 Wn. App. at 406-07, ¶ 11.

Likewise here, it is undisputed that the temporary adjustment to the residential schedule was exactly that – temporary. (CP 189) Although the mother had asked to bring the parties' daughters with her to California, she acquiesced when the father objected. (CP 95)

Both parties knew the adjusted schedule was temporary, as evidenced by the fact that neither party sought to modify the parenting plan during the period. Instead, the parties affirmed their commitment to the original 50/50 parenting plan by immediately resuming that schedule when the mother returned to Washington. Regardless of the temporary adjustment to the parenting plan, the parents remained equal residential parents under the 50/50 parenting plan.

The parties and the trial court were bound by the 50/50 parenting plan, and the trial court could not look beyond it to determine which parent was the "actual" primary residential parent. Since neither parent qualified as a primary residential parent under the 50/50 parenting plan, and the court found no basis to modify the parenting plan, the trial court should have dismissed the relocation and modification actions.

B. The Child Relocation Act does not apply to 50/50 parenting plans.

The Child Relocation Act does not apply to 50/50 parenting plans. "[B]y the plain language of the child relocation statutes, the notice requirements are triggered by the intended relocation of a person 'with whom the child resides a majority of the time.' RCW 26.09.430. This plain language suggests that if neither parent

qualifies as a parent with whom a child resides a majority of the time, for example when residential time is split 50/50, that neither parent can invoke the child relocation statute and receive the rebuttable presumption in his/her favor." *Marriage of Fahey*, 164 Wn. App. 42, 58, ¶ 32, 262 P.3d 128 (2011), *rev. denied* 173 Wn.2d 1019 (2012).[1] Further, to "relocate" is to change that child's "principal residence." RCW 26.09.410(2). When there is no "principal residence," as here, the Act cannot apply because the child cannot be "relocated" as defined by the Act.

Below, the father relied on legislative history of the Child Relocation Act to claim that comments from a legislative representative showed an intent for the Act to apply to 50/50 parenting plans, but in those cases "the notice requirements apply to both parties and the presumption to neither." (CP 65, comment attributed to Representative Constantine) But our Supreme Court has regularly cautioned that "a legislator's comments from the floor

[1] The respondent claims that this analysis is dictum. Dicta are "statements in a case that do not relate to an issue before the court and are unnecessary to decide the case." *Pierson v. Hernandez*, 149 Wn. App. 297, 305, ¶ 23, 202 P.3d 1014 (2009). The *Fahey* analysis is not dictum because it squarely addressed an issue raised by the father there – when there is an "approximately" equal parenting plan does the Child Relocation Act apply? *See* 164 Wn. App. at 58, ¶ 32 ("Lawrence's arguments highlight the absence of statutory guidance in 50/50 residential time situations.").

are not necessarily indicative of legislative intent." *Spokane Cty. Health District v. Brockett*, 120 Wn.2d 140, 154-55, 839 P.2d 324 (1992). "The answer of a single legislator should not create an intent different from that in the official committee report if the answer is inconsistent with the report." *North Coast Air Servs., Ltd. v. Grumman Corp.*, 111 Wn.2d 315, 326, 759 P.2d 405 (1988). In this case, the legislator's comment is inconsistent with the "plain language" of the statute as enacted, because as this Court recognized in *Fahey*, the Act *requires* that there be a parent with whom the child resides the majority of the time for the Act to apply:

> If neither parent qualifies as a parent with whom a child resides a majority of the time, for example when residential time is split 50/50, [ ] neither parent can invoke the child relocation statute.

164 Wn. App. at 58, ¶ 32 (addressing RCW 26.09.430).

The interpretation of the Child Relocation Act advocated by the father requires the court to read language into the statute that is not there. As our Supreme Court has held, "we will not read qualifications into the statute which are not there. A court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." *Custody of Smith*, 137 Wn.2d 1, 12, 969 P.2d 21, 26 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)

(quotations omitted). "Courts do not amend statutes by judicial construction, nor rewrite statutes to avoid difficulties in construing and applying them." *Parentage of C.A.M.A.*, 154 Wn.2d 52, 69, 109 P.3d 405 (2005) (quotations omitted). But that is exactly what the father asks this Court to do.

For instance, RCW 26.09.430 provides that "a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate." The father would have this Court "read qualifications into the statute which are not there" and rewrite RCW 26.09.430 to instead provide that "a person with whom the child resides a majority of the time **or an equal time** shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate."

Likewise, RCW 26.09.520 provides that "the person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the

relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed."

But again, the father would have this Court "read qualifications into the statute which are not there" and rewrite RCW 26.09.520 to instead provide that "the person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted, **unless the child resides equally with the parents. Except when the child resides an equal time with the person entitled to object,** a person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed."[2]

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[2] In addition to the statutory rewrites to RCW 26.09.430 and RCW 26.09.520 proposed by the father, this Court would have to redefine the statutory definition for "relocate" under RCW 26.09.410 to mean a "change in principal **or equal** residence."

"When the words in a statute are clear and unequivocal, this court is required to assume the Legislature meant exactly what it said and apply the statute as written." *Custody of Smith,* 137 Wn.2d at 8 (citations omitted). In this case, the Court must assume that the Legislature did not intend for the Child Relocation Act to apply to 50/50 parenting plans when there is no parent with whom the child resides a majority of the time. This is especially true where even without the primary residential parent presumption, the Act is ill-suited to deciding whether to allow a child to relocate away from a parent with whom she lives an equal amount of time as the relocating parent. The Act "shifts the analysis away from only the best interests of the child to an analysis that focuses on both the child and the relocating person." *Marriage of Horner,* 151 Wn.2d 884, 887, 93 P.3d 124 (2004). As our Supreme Court acknowledged in *Horner,* of the 11 factors that the courts are required to consider under RCW 26.09.520 to decide whether to allow the child to relocate, only 4 relate solely to the child's interests. *Horner,* 151 Wn.2d at 894, fn. 9 (citing to RCW 26.09.520 (1), (3), (6), (8)).

Rather than the child's best interests, RCW 26.09.520 gives import to the "interests and circumstances of the relocating person:"

> Consideration of all of the factors is logical because they serve as a balancing test between many important and competing interests and circumstances involved in relocation matters. Particularly important in this regard the interests and circumstances of the relocating person. Contrary to the trial court's repeated references to the best interests of the child, the standard for relocation decisions is not only the best interests of the child.

Horner, 151 Wn.2d at 894. The Act focuses on the relocating parent because of "the traditional presumption that a fit parent will act in the best interests of her child," and the deference given to the primary residential parent's decision that relocation is in the family's best interests. *Horner*, 151 Wn.2d at 887 (citing *Custody of Osborne*, 119 Wn. App. 133, 144, 79 P.3d 465 (2003)). But when parents are joint legal custodians under a 50/50 parenting plan, the non-relocating parent's determination that a relocation is not in the child's best interest must be given equal weight to the relocating parent's determination that a relocation is in the child's best interests. Likewise, the "interests and circumstances of the relocating person" is equal to the "interests and circumstances of the non-relocating person." In such a case, it is the "interests and circumstances" of the *child* that must prevail.

When the child resides equally with each parent under a 50/50 parenting plan, the focus cannot just be on the relocating

parent, because the disruption if the child is moved away from the non-relocating parent is the same as that with the relocating parent. In those instances, the analysis cannot be focused on the "child and the relocating person," as required by the Act, but on the child alone. The Act thus cannot be applied to 50/50 parenting plans. Instead, the standard for modifying parenting plans, which focuses on the best interests of the child alone, is properly used to decide whether to allow a parent to become the primary residential parent as a result of relocation.

C. A parent who wishes to modify a 50/50 parenting plan to relocate the child away from a parent with whom the child equally resides must prove a basis to modify the parenting plan under RCW 26.09.260.

Because the Child Relocation Act does not apply to 50/50 parenting plans, the trial court erred in failing to dismiss the father's relocation action. The trial court further erred in not dismissing the action once it found that the father failed to show adequate cause under RCW 26.09.260 (1) and (2) – the bases on which he relied in his petition for modification. (CP 87, 221-22, 245)

When a parent wishes to relocate a child whose residential time is governed by a 50/50 parenting plan, the relocating parent must prove a basis to modify the parenting plan under RCW 26.09.260. Therefore, before a child can be relocated, the trial court

must first determine that "a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interests of the child and is necessary to serve the best interests of the child." RCW 26.09.260(1). In applying these standards, the trial court must consider whether the parties agree to the modification, the child has been integrated into the family of the petitioner in substantial deviation from the parenting plan, the child's present environment is detrimental, or the nonmoving party has been held in contempt of the residential schedule at least twice within three years. RCW 26.09.260(2)(a), (b), (c), (d).

Application of these standards before a court can modify a 50/50 parenting to accommodate a child's relocation is consistent with Washington law and policy on the best interests of children, which views "custodial changes [ ] as highly disruptive to children [and] there is a strong presumption in favor of custodial continuity and against modification." *Welfare of R.S.G.*, 172 Wn. App. 230, 245, ¶ 32, 289 P.3d 708 (2012) (reversing order modifying parenting plan when trial court did not apply the mandatory standards in RCW 26.09.260). As this Court recognized in *Drury v. Tabares*, 97 Wn. App. 860, 864, 987 P.2d 659, 661 (1999), the goal of preserving the

"custodial continuity" of a 50/50 parenting plan is just as important as preserving a child's custodial continuity with a primary residential parent.

In *Drury,* the parties' original parenting plan placed the children primarily with the father. The parties subsequently informally agreed to a residential schedule giving each parent an equal number of overnights with the children. More than a year after following this plan, the mother petitioned to modify the parenting plan. The trial court found adequate cause for a modification based solely on the parents' agreement to a 50/50 residential schedule. Nevertheless, in modifying the parenting plan, the trial court in fact granted the mother 4 more overnights than the father during a four-week period, even though it stated that it intended to preserve the 50/50 schedule.

This Court reversed, holding that "given the strong policy in favor of custodial continuity, the changes here, amounting to one night a week, are significant." *Drury,* 97 Wn. App. at 864. Noting that the "state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests," this Court held that the

trial court could not disrupt the 50/50 schedule that the parties had agreed upon without setting forth specific grounds under RCW 26.09.260 to modify the parenting plan. *Drury,* 97 Wn. App at 864. This Court held that because the only grounds for modifying the parenting plan found by the trial court was that the parties agreed to a 50/50 schedule, the trial court could only "modify the actual schedule to fit the parties' needs so long as an even division is maintained." *Drury,* 97 Wn. App. at 864, fn. 3.

Likewise here, the trial court could not modify the parties' 50/50 parenting plan without first complying with RCW 26.09.260. Even a small change that results in making one parent the primary residential parent, when it was intended that the parents be equal residential parents, is "significant." *Drury,* 97 Wn. App. at 864. As our Supreme Court has recognized, the procedures for modification of a parenting plan under RCW 26.09.260 are intended to "protect stability by making it more difficult to challenge the status quo." *In re C.M.F.,* 179 Wn.2d 411, 419-20, ¶ 13, 314 P.3d 1109 (2013). In this case, the "status quo" is that the child resides equally with each parent in Battleground, Washington. That status quo cannot be disrupted unless the father proves a basis under RCW 26.09.260. Thus, once the trial court rejected the father's claimed bases to

modify under RCW 26.09.260, the trial court was required to dismiss all pending actions seeking to relocate the daughter.

VI. CONCLUSION

This Court should reverse the trial court's order setting an evidentiary hearing and remand it with directions to dismiss the father's relocation and modification actions.

DATED this 1st day of August, 2016.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 1, 2016, I arranged for service of the foregoing Brief of Petitioner, to the court and to the parties to this action as follows:

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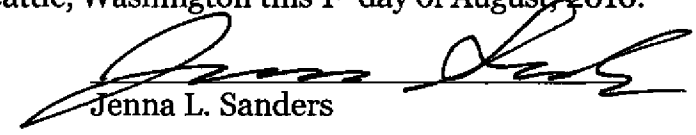

Jenna L. Sanders

SMITH GOODFRIEND, P.S.

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